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Attorneys for Defendant

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARVIN FRANK, Individually and On Behalf  
of a Class

Defendant,

v.

BENJAMIN STEAKHOUSE,

Defendants

CIVIL ACTION NO. 07-CV-11419 (JSR)

HONORABLE JED S. RAKOFF

**A & B RESTAURANT GROUP, LLC'S RULE 26(a)(1) DISCLOSURES**

Pursuant to Federal Rule of Civil Procedure 26(a)(1), defendant A & B RESTAURANT GROUP, LLC, ("A&B") improperly plead as BENJAMIN STEAKHOUSE makes the following disclosures.

**INTRODUCTORY STATEMENT**

The following disclosures are made based on the information reasonably available to defendant as of this date. By making these disclosures, defendant does not represent that it is identifying every document, tangible thing, or witness possibly relevant to this lawsuit. Nor does

defendant waive its rights to object to production of any document or tangible thing disclosed herein on the basis of any privilege, the work product doctrine, relevancy, undue burden or any other valid objection. Rather, defendant's disclosures represent a good faith effort to identify information it reasonably believes is relevant to the factual disputes identified above.

Further, defendant notes that persons who are not now associated with defendant may have relevant information. Defendant is not purporting in the following disclosures to make disclosures on behalf of, or based on the information available to, all such persons.

Finally, defendant's disclosures are made without in any way waiving: (1) the right to object to the use of any such information on the grounds of competency, privilege, relevancy and materiality, hearsay or any other ground, for any purpose, in whole or in part, in any subsequent proceeding in this action or any other action; and (2) the right to object on any and all grounds, at any time, to any other discovery request or proceeding involving or relating to the subject matter of these disclosures.

All of the disclosures set forth below are made subject to those objections and qualifications.

**1. Rule 26(a)(1)(A) – Individuals likely to have discoverable information that A&B may use to support its claims or defenses.**

The following individuals are likely to have discoverable information that A&B may use to support its claims or defenses related to, among other things, efforts undertaken to comply with FACTA.

**a. Employees of A&B:**

Victor Dedushaj (May be contacted through counsel)

Alban Prelvukaj (May be contacted through counsel)

b. Employees of Retail Automation Products (RAP-POS)

Customer Support employees and technicians unidentified at the present time.

**2. Rule 26(a)(1)(B) – Documents, data compilations, and tangible things in the possession, custody, or control of A&B that it may use to support its claims or defenses.**

The documents which A&B may use to support its claims and/or defenses include:

a. Sample receipts printed after conversion of A&B's credit card terminals to delete expiration dates;

b. Sample credit card receipts printed before 12/4/06; and

c. Database records which reflect total transactions. Upon entry of and subject to an appropriate Fed. R. Civ. P. 26(c) Protective Order, subject to proper objections, and subject to any bifurcation or phasing of discovery resulting from stipulation of the parties or Court order, A&B shall make available to Plaintiff's counsel documents, materials and things relevant to the subject matter of this litigation at a mutually agreeable time and place. A&B will supplement the foregoing with documents, materials and things during and/or after discovery proceedings in this case as additional information becomes available.

**3. Rule 26(a)(1)(C) – A computation of any category of damages claimed by A&B.**

Not applicable at this time.

**4. Rule 26(a)(1)(D) – Any insurance agreement under which any person carrying on an insurance business may be liable in this action.**

Not applicable at this time.

NICOLL DAVIS & SPINELLA LLP  
Attorneys for Defendant,  
A & B RESTAURANT GROUP, LLC,  
improperly plead as BENJAMIN STEAKHOUSE,

BY: /s/ Jack T. Spinella  
JACK T. SPINELLA  
STEVEN C. DEPALMA

Dated: April 3, 2008

**CERTIFICATION OF SERVICE**

I, Jack T. Spinella, do hereby certify that I am over the age of 18 and not a party to this action and that on the 3<sup>rd</sup> day of March, 2008, I did cause to be served a true and correct copy of A & B RESTAURANT GROUP, LLC's rule 26(A)(1) DISCLOSURES via electronic filing on:

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I declare under penalty of perjury that the foregoing is true and correct. Executed at Paramus, New Jersey, this 3rd day of April, 2008.

/s/ Jack T. Spinella  
JACK T. SPINELLA